SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1042 OF 2006

Ashfaq Hussain Shaikh & Ors. ... Petitioner

Vs.

The State of Maharashtra & Anr. ...

Respondents

Mr. A. Rasheed Qureshi i/b Mr. Prasad Kulkarni & Anant Vadgaonkar for the Petitioner.

Mr. Hakim Salim for respondent 2 for the Respondents.

CORAM : SMT. RANJANA DESAI, J.
DATED : 7TH NOVEMBER, 2006.

P.C. :-

1. In this petition, under Articles 226 and 227 of the Constitution of India, the petitioners have prayed that the proceedings in FIR in C.R.No. 105/2005 lodged at Nagpada Police Station on 17/03/2005 be quashed and set aside.

2. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for respondent 2. Learned counsel for the petitioners contended that the matrimonial dispute between petitioner 1 and respondent 2 is amicably resolved and

consent terms have been filed in the Family Court, Bandra, Mumbai on 16/02/2006. A xerox copy of

the said consent terms is taken on record and marked 'X'. Divorce deed is annexed thereto. The learned counsel for respondent 2 confirms this fact. Relying on the Judgment of Supreme Court in ***B. S. Joshi Vs. State of Haryana (2003) 4 Supreme Court Cases 675***, the learned counsel for petitioner 1 contended that in view of the amicable settlement of the matrimonial dispute, this court should quash the pending FIR in C.R. No. 105/2005 lodged at Nagpada Police Station on 17/03/2005 by respondent 2.

3. I find substance in the submission. Reliance placed by the learned counsel for petitioner 1, on B. S. Joshi's case (Supra) is apt. In ***B. S. Joshi's Case (Supra),*** the Supreme Court was considering the scope of inherent powers of the High Courts under Section 482 of the Criminal Procedure Code (for short, “Cr. P. C.”) read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings. In that case, marriage between appellant 4 and respondent 2 was dissolved by a decree of divorce by mutual consent. Criminal proceedings were filed by respondent 2 – wife under Section 498-A and 406 of the IPC against the appellants. A prayer for quashing of the said FIR was made by the appellants. It was rejected by the High Court on the ground that the offences under Section 498-A and 406 of the IPC are non-compoundable and the inherent powers under Section 482 of the Cr. P. C. cannot be invoked to bypass the mandatory provision of Section 320 of the Cr. P. C.

4. The Supreme Court set aside the High Court's order. The Supreme Court observed that where in the opinion of the court, chances of an

ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of the case, quash the proceedings. The Supreme Court observed that the special features in matrimonial matters are evident and it becomes the duty of the court to encourage genuine settlements of matrimonial disputes. The Supreme Court observed as under:-

> "14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code."

5. In the facts and circumstances of that case, the Supreme Court quashed the FIR.

6. Since the parties have settled the matrimonial dispute, in the interest of justice, in order to ensure peace I am of the opinion that, the proceedings in FIR in C.R. No. 105/2005 need to be quashed in

the light of the above judgment of the Supreme Court. Hence the following order.

7. For the reasons mentioned in the above paragraphs, entire

..4..

proceedings in FIR in C. R. No. 105/2005 lodged at Nagpada Police Station on 17/03/2005 by respondent 2 are quashed. If any articles of respondent 2 are with petitioner 1, they may be handed over to respondent 2. Needless to say that all allegations made by the parties against each other stand withdrawn.

8. The petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)